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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-44
164-166 S. Main Street
Acushnet, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Acushnet Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Acushnet Citizen's Club, Inc. (hereinafter referred to as the "Appellant"). The building, which is the subject of the order, is located at 164-166 S. Main Street, Acushnet, MA.

B) Procedural History

By written notice dated April 28, 2005, the Acushnet Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 164-166 S. Main Street, Acushnet, MA. The Appellant filed an appeal of said order on June 2, 2005. The Board held a hearing relative to this appeal on November 9, 2005, at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Mr. Stanley Garcia, Secretary of the Acushnet Citizen's Club. The Acushnet Fire Department was represented by Chief Kevin A. Gallagher.

Present for the Board were: Maurice M. Pilette, Chairperson, Edward G. McCann, Brian Gore, Chief Thomas Coulombe and Stephen D. Coan, State Fire Marshal. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Acushnet Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Written Statement in Support of Appeal
3. Order of Acushnet Fire Department
4. Notice of Hearing to Appellant
5. Notice of hearing to Acushnet Fire Department
6. Certificate of Inspection (issued October 2003)
7. Safety Inspection Check List
8. Restricted Music License
9. Club Alcohol License
10. Photographs (A-D)

E) Subsidiary Findings of Fact

- 1) By Notice dated April 28, 2005 the Acushnet Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 164-166 S. Main Street, Acushnet, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2. The Appellant timely filed an appeal of said order on June 2, 2005. After appropriate notice, the Board held a hearing relative to this appeal on November 9, 2005, at the Department of Fire Services, Stow, Massachusetts.
- 2) According to the representative for the Appellant, the building is a single level cement block and brick building that measures 37 ft. x 47 ft with approximately 925 s.f. of interior floor space. The building has two rooms connected to one another by a doorway, which allows patrons to freely walk from one room to the other. One room is considered a bar area. The bar has 12 bar stools and there are several booths across from the bar area. The bar area also features a music jukebox. The other room contains a pool table and several booths. There is a "pass through" area between the two rooms that has been used in the past to serve both food and beverages to both rooms simultaneously. In total, Appellant stated that there are 55 seats, counting bar stools, booths, and loose chairs.

- 3) According to the Certificate of Inspection issued by the Acushnet Building Department, the establishment is described as a “tavern & hall” with a legal capacity of 100 persons. The establishment has a club liquor license that allows the establishment to serve “all types” of liquor. The club also has a restricted music license which allows radio, television and juke box music only from 8:00 A.M. to 2:00 A.M. Mondays through Saturday.
- 4) The Appellant testified that the club, established in the 1940s, is a non-profit social club for the residents of the town of Acushnet. There are currently 75 members or shareholders, many of whom have inherited their shares in the club from family members and other Acushnet residents. The Appellant acknowledged the building as described and affirmed the legal occupancy, but asserts that the establishment does not usually have over 50 persons inside at any one time.
- 5) The appellant indicated that there is no dance floor and that there are limited functions held in the pool room area attended by no more than 25-30 persons. The jukebox is the only means of entertainment. The hours of operation are typically 11 a.m. to 1 a.m., 7 days a week. The Appellant indicated that the establishment has no real kitchen and has very limited food service for light snacks.
- 6) The Appellant indicated that the patrons who frequent the establishment include members and their guests. The outside of the club has a “Citizens Club” sign. However, the Appellant indicated that a non-member “walk-in” who happens to patronize the club may not necessarily be refused bar service.
- 7) The Appellant contends that this establishment is not subject to the provisions of M.G.L. c.148, s.26 G1/2 since this establishment features very limited entertainment and does not feature a dance floor. The Appellant also emphasized the small nature of this club and indicated that preliminary estimates on a sprinkler system would run upwards of \$25,000. Such costs would be a major financial hardship and burden on the club. The appellant failed to provide any documentation to support the cost estimate. He further indicated that despite current tax allowances to assist in obtaining funding for sprinklers, it would be of no assistance to his club, as they have no means of paying back any loans since the club is non-profit organization.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall,

discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.

- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In previous determinations and in an advisory memorandum dated 1-10-05 this Board has established certain factors which it will consider in determining if an establishment features characteristics that are typical of the type of facilities within the scope of the enhanced sprinkler requirements of M.G.L. c. 148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. Thus far this board has applied those factors that are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) to determine if an establishment presents characteristics of a “nightclub, dance hall or discotheque. In such case the Board will consider such factors as:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

This list of characteristics is not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building. It is noted that the list of the “A-2 like characteristics”, as determined by this Board applied to nightclubs, dancehall and discotheques.

Some of these particular characteristics, such as low lighting, entertainment by a live band or recorded music generating above normal sound levels and a specific area designated dancing, may not necessarily exist in certain establishments that clearly may be considered a “bar”. Nevertheless, the provisions of M.G.L. clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...bar...”.

- 5) The building at issue clearly has the characteristics of a “bar” such as :
- a. Full liquor license
 - b. Classification as a “tavern” on the Certificate of Inspection
 - c. The existence of a bar, and bar seating or bar standing and a bar tender for the purposes of serving alcoholic beverages to patrons
 - d. The establishment provides minimum, limited or no food service
 - e. Later than average operating hours
 - f. The establishment features activities, atmosphere and a décor which makes a customer reasonably expect “bar-like” accommodations. Examples of such features in this establishment include a “jukebox”, a pool table and several televisions for sports and entertainment viewing purposes. Additionally, there are several lights, signs and commercial ornaments promoting alcoholic beverages in both areas of the establishment.

G) DECISION AND ORDER

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby determines that the building located at 164-166 S. Main Street, Acushnet, MA. is a public assembly with a legal capacity of 100 or more persons and is currently used or designed as a “bar”. Accordingly, the Order of the Acushnet Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 is hereby affirmed. An adequate sprinkler system shall be installed in accordance with statutory timeline as follows:

1. The submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006); and
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

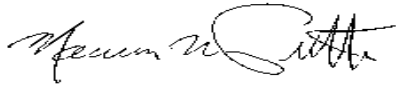
H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Edward G. McCann	In favor
Stephen D. Coan, State Fire Marshal	In favor
Thomas Coulombe	In favor
Brian Gore	In favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E.. Chairman

Dated: December 5, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO: Mr. Stanley Garcia, Secretary, Acushnet Citizen's Club, 164-166 S. Main Street, Acushnet, MA 02743 and by **1st CLASS MAIL, POSTAGE PRE-PAID, TO:** Chief Kevin A. Gallagher, Acushnet Fire Department, 24 Russell Street, Acushnet, Massachusetts 02743.